

ORIGINAL**FILED****JUN 16 2003**

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

CLERK, U.S. DISTRICT COURT

By

Deputy

AMARILLO DIVISION

JAMES AVERY RUSH, IV,

Plaintiff,

VS.

NO. 2-03CV-0140J

NATIONAL BOARD OF MEDICAL
EXAMINERS,

Defendant.

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Defendant NATIONAL BOARD OF MEDICAL EXAMINERS ("Defendant") responds to Plaintiff's Motion for Preliminary Injunction on a paragraph-by-paragraph basis as follows:

1. Defendant denies that Plaintiff has a learning disability or suffers from Attention Deficit with Hyperactivity Disorder ("ADHD") and denies that Plaintiff has any impairment which substantially limits one or more of his major life activities.

2. Defendant admits that Plaintiff has applied to it to take the USMLE Step 1 exam and has requested an accommodation of his alleged disabilities in the form of additional time to take the exam. However, Defendant denies Plaintiff is disabled under the ADA and denies that he is entitled to his requested accommodation.

3. As Plaintiff alleges, Defendant has denied his request for an accommodation in the taking of the Step 1 exam. Although Defendant provides reasonable accommodations in accordance with the ADA for individuals with documented disabilities, Defendant denies that Plaintiff has appropriately documented or otherwise proven that he is disabled within the meaning of the ADA such that he is entitled to accommodation.

4. Due to the fact that Plaintiff has not appropriately documented or otherwise proven that he is disabled within the meaning of the ADA such that he is entitled to accommodation, Plaintiff is not entitled to the injunctive relief which he requests. Additionally, Defendant denies that Plaintiff will be irreparably harmed if he is not provided with his requested accommodation. Finally, Defendant denies that it has, or is, in any way violating any rights Plaintiff may have under the Americans with Disabilities Act (“ADA”).

5. Defendant denies that it will not be harmed if the Court provides Plaintiff the relief he requests. Likewise, Defendant denies Plaintiff’s allegation that the public interest will be served by granting him the relief he requests.

6. Defendant denies that it has, or is, in any way violating any rights Plaintiff may have under the ADA and denies that Plaintiff is entitled to any of the relief he requests.

7. Defendant will file a separate Brief in Opposition to Plaintiff’s Motion and will also file a Memorandum of Law Concerning the ADA.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing from Defendant and that Defendant recover its attorneys' fees, costs, expenses and other relief to which it is entitled.

SIGNED this 16th day of June, 2003.

Respectfully submitted,

GIBSON, OCHSNER & ADKINS, LLP
Thomas C. Riney – TBN 16935100
Stephen H. Dimlich, Jr. – TBN 05879550
701 South Taylor, Suite 500
Amarillo, Texas 79101-2400
(806) 372-4271; Fax (806) 378-9797

By 

Thomas C. Riney

ATTORNEYS FOR DEFENDANT
NATIONAL BOARD OF MEDICAL
EXAMINERS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Defendant's Response in Opposition to Plaintiff's Motion for Preliminary Injunction is being served upon counsel of record by hand delivery this 16th day of June, 2003, as follows:

John Mozola
Vincent E. Nowak
Brad A. Chapman
MULLIN HOARD & BROWN, LLP
500 South Taylor, Suite 800
Amarillo, TX 79101


Thomas C. Riney